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83-1592

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1983

STANLEY E. TRANOWSKI,

Petitioner pro se

v.

UNITED STATES SECRET SERVICE, et. al.,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

STANLEY E. TRANOWSKI
Petitioner pro se

STANLEY E. TRANOWSKI
5171 WEST ST. PAUL AVE.
CHICAGO ILLINOIS 60639
(312) 237-2705

QUESTIONS PRESENTED FOR REVIEW

1. Can a later "naked" judgment order of the Circuit Court of Appeals from the same Circuit, that is neither based on fact or law in accordance with the specific case, but in compliance with its own local D.C. Rule 13 (c) of that Court, overturn the well-reasoned fact and law determination of a previous panel's specific mandate to the District Court ?

2. Does the conflict that is created by the two conflicting judgments, one "naked" and the other sounded in law and fact help to promote harmony in the Circuit Court's reasoning, in its interpretation of the doctrine of stare decisis and the law of the case doctrine ?

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U.S. Constitution, Fifth Amend., ... PASSIM

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

STANLEY E. TRANOWSKI,
Petitioner, pro se

v.

UNITED STATES SECRET SERVICE, et. al.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. (Re: Judgment # 83-1267)

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, STANLEY E. TRANOWSKI, respectfully prays that a Writ of Certorari issue to review the opinion, judgment and order of the United States Court of Appeals for the District of Columbia Circuit in Cause No. 83-1267.

OPINIONS BELOW

There are three (3) separate and distinct judgments entered in regards to this litigation arising from the Circuit Court of Appeals for the District of Columbia Circuit. Each of the "judgments" is unpublished in accordance with Local Rule 8 (f) of that Circuit.

The first unpublished "judgment" was entered in No. 80-1386 reversing and remanding the case to the District Court for further proceedings. (Exhibit "THREE"). After remand the Respondent again filed a motion for Summary Judgment. The District Court again granted Summary Judgment with prejudice. The Circuit Court of Appeals again reversed and remanded with specific instructions for additional release of documents pertaining to witnesses and their statements who had testified in Petitioner's trial in 76 CR 803 and Petitioner's brother's trial in 79 CR 402. (Exhibit "TWO"). Respondents filed a "Petition for Rehearing" which was denied on 7th June 1982.

Upon remand to the District Court for the second time, the Respondents denied that their files contained a witness list, or witness statements of those witnesses in either trial and in support of that contention filed three (3) separate and distinct affidavits. On 10th JANUARY, 1983, the District Court entered an Order allowing the Respondent's "Motion to Dismiss" as being in compliance with the Circuit Court's mandate in No. 81-2030. Petitioner appealed again for a third time under 83-1267. On 21st OCTOBER, 1983, a panel of the Circuit Court, without deciding a single issue on appeal issued an unpublished Judgment in compliance with Local D.C. Rule 13 (c) of that Court. A Petition for Rehearing En Banc was filed and denied on 17th NOVEMBER, 1983. (EXHIBIT "ONE")

JURISDICTION

The last judgment of the Court of Appeals for the District of Columbia Circuit was entered on 21st OCTOBER, 1983. The order of the Court of Appeals denying the petition for rehearing

with suggestion for rehearing en banc was entered on 17th NOVEMBER, 1983. Petitioner invokes the Court's jurisdiction to review the appellate court's decision purusuant to 28 U.S.C., Section 1254 (1) (1976).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional provision involved in this case is as follows:

UNITED STATES CONSTITUTION, FIFTH AMENDMENT:

> "No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The statutory provisions involved in this case are as follows:

FREEDOM OF INFORMATION ACT, (FOIA) 5 TITLE U.S.C., sec. 552 (a) (b)(2) (b)(5), (b)(7) (C thru F inclusive)

LOCAL D.C. RULE 13 (c), of the Circuit Court of Appeals for the District of Columbia Circuit.

STATEMENT OF THE CASE

A: Procedural History

The Petitioner made an application for disclosure of documents and information from the United States Secret Service agency in Washington D.C., under the FREEDOM OF INFORMATION ACT, 5 TITLE U.S.C., Sec. 552 (a) after his federal criminal conviction in Cause No.76 CR 803 in the District Court for the Northern District of Illinois, Eastern Division.

The letter of request was dated 6th OCTOBER, 1978. After much correspondence and Petitioner's compliance with agency rules

the agency released some documents on 26th MAY, 1979. In the release of those documents there was a cover letter which illustrated that other documents in their entirety were being withheld under several exemptions of 5 TITLE U.S.C., Section (b)(2), (b)(5), and (b)(7) (C thru F inclusive). Petitioner immediately filed an administrative appeal. Petitioner wrote two separate letters of appeal dated 2 JUNE, 1979, in which he specifically demanded the release of documents which were either mentioned in the prior release of documents, or in the alternative, which were known to him to have existed because they surfaced during the trial and testimony given by the government witnesses. The request for the FOIA information was specific --not general. The agency's administrative appeal's board failed to respond to the appeal request in the twenty (20) day allotted time-frame, although it had been alerted to Petitioner's intention to seek legal litigation. Meeting with total silence from the agency's appeal board, Petitioner

filed a civil suit pro se in the District Court. Simultaneously, upon filing in the District Court, Petitioner had made service upon the Defendant agency. Shortly, thereafter, petitioner received a second batch of documents with a complete Xerox copy of the civil "complaint" that had been filed in the District Court.

Again, with the release of those documents the appeal's agency indicated that additional documents were being withheld under Exemptions (b)(7) (C thru D) and (b)(5) with the added notation in paragraph four (4) which stated:

> "The above cited exemptions are not to be construed as the only exemptions which may be applicable to those documents under the Freedom of Information Act."

After receiving a lenthly government affidavit under the signature of one MYRON I. WEISNSTEIN and purporting the inspection of the withheld documents in camera the District Court granted Summary Judgment for the Government.

Petitioner appealed; and on 19th FEBRUARY 1981, a panel of the Circuit Court of Appeals for the District of Columbia Circuit in cause No. 80-1386 entered a judgment reversing and remanding the case to the District Court for further proceedings. After remand, the Respondent again filed a motion for Summary Judgment and a so-called compliance with Local Rule 1-9 (h). Although Petitioner filed a motion in opposition to summary judgment, the District Court filed an Order with prejudice on 4th SEPTEMBER, 1981, allowing Summary Judgment for the Respondent.

The case was appealed for a second time under Cause No. 81-2030. Again, the Circuit Court reversed and remanded with specific instructions that certain documents and information was illegally withheld from Petitioner and must be released.

Upon remand to the District Court the Respondents resorted to deception to avoid compliance with the Court's specific mandate in No. 81-2030 by the substitution of purgative

documents which had been previouslly released to Petitioner. The BECHTLE and the two BARTON affidavits which were submitted in the District Court when viewed in conjunction with the Respondent's "Petition for Rehearing" in the Circuit Court of Appeals in Cause No. 81-2030 readily point up the "bad faith" and fraud that was perpetrated upon the judicial system.

The District Court again allowed the Respondent's "Motion to Dismiss" by an Order dated 10th JANUARY, 1983; but first received in hand be Petitioner on 19th FEBRUARY, 1983, because of misdirected mail.

Petitioner immediately appealed again for a third time under No. 83-1267. On 21st OCTOBER 1983, a penl of the Circuit Court of Appeals fcr the District of Columbia Circuit, without opinion, issued a Judgment without deciding any of the merits of the appeal. A Petition for Rehearing En Banc was filed and denied on 17th NOVEMBER, 1983. Petitioner did not receive the denial of the Petition for Rehearing until 10th DECEMBER, 1983, and immediately filed a motion to recall the mandate and to

further stay issuance of the mandate pending action by the Supreme Court upon Petition for Certiorari. Said motion was filed on 12th DECEMBER, 1983, and thereafter denied.

REASONS FOR GRANTING CERTIORARI

1. THE CIRCUIT COURT OF APPEALS "NAKED" JUDGMENT ORDER IN CAUSE NO. 83-1267 UNDERCUTS THE SPECIFIC DETERMINATION AS TO WHETHER OR NOT THE DEFENDANT AGENCY DID COMPLY WITH THE EXPLICIT MANDATE OF THE CIRCUIT COURT'S PREVIOUS UNANIMOUS PANLE'S DECISION HANDED DOWN IN NO. 81-2030.

The present Circuit Court of Appeal's Judgment, citing a "naked" order, without meeting the merits of the appeal is in conflict with the previous unanimous panel's decision in No. 81-2030 that specified that certain specific documents must be released to Petitioner.

To avoid such a release of documents the Defendant agency hoodwinked the District Court into believing that compliance with the Circuit Court's mandate was consummated. In actuality the Defendant agency substituted documents

and which were not the subject of the present litigation. When that fact was pointed out by petitioner in his original brief (pp.9-11) in the Circuit Court, the Government in its "Answer Brief" (p. 11 Gov. Brief) in trying to explain away the fact, stated:

> "***A SIGNIFICANT PORTION OF THE RELEASED DOCUMENTS INCLUDED DOCUMENTS THAT HAD BEEN PREVIOUSLY RELEASED WITH REDACTIONS. THE RELEASE SIMPLY MADE THE ADDITIONAL DISCLOSURES REQUIRED.***"
>
> (Emphasis supplied)

Nothing is further from the truth. Petitioner points out that instead of the Respondent abiding by the Circuit Court's mandate in 81-2030 holding with that Court's reasoning cited in NLRB v. ROBBINS TIRE & RUBBER CO., 437 U.S. 214 242 (1979) that certain documents in Petitioner's case must be released, and could not be withheld, since the law does not contemplate withholding the names and prior statements of individuals who have given public testimony. The Circuit Court further held that disclosing the names of "law enforcement officers" in this case is in harmony with its previous holding

in LESAR v. DEP'T. OF JUSTICE, 636 F. 2d 472, at 487 (D.C. Cir. 1980).

What the Respondent had done upon remand to the District Court on the second appeal in 81-2030, as is demonstrated by the BETCHLE and the two BARTON affidavits tendered in the District Court in order to defeat the purpose of the mandate knowingly and deliberately took a quantity of previously released purgative documents, duplicated and triplicated them, without pagination to any organized system of indexing; and to give solemnity of seal placed them under a Secret Service "Acting Director's affidavit as being in full compliance and in "good faith" with the Circuit Court's mandate of 21st JUNE, 1982, in the unpublished judgment in No. 81-2030 and the District Court's Order of 2 NOVEMBER, 1982.

The Circuit Court's decision in No. 81-2030 must be considered controlling as determinative as the law of the case since the Respondent's Petition for Rehearing was denied on 21st JUNE, 1982, and they did not seek a Petition for Certiorari in the Supreme

Court. (cf: HENDERSON v. UNITED STATES, 218 F. 2d 14 (6th Cir. cert. denied, 349 U.S. 920 (1955); INLAND FREIGHT LINES v. UNITED STATES, 202 F. 2d 169 (10th Cir. 1953).

Upon remand in No. 81-2030 the District Court did not implement the Circuit Court of Appeals mandate, but permitted the Respondent to file evasive and deceptive affidavits cited as the BECHTLE affidavit of 6th OCTOBER, 1982, which denied that the agency had a list of witnesses (i.e., who testified in Petitioner's criminal trial and that of his brother), as designated by the panel's mandate in No. 81-2030 and therefore maintained that it could not comply with the Court's mandate. Those statements were diametrically opposed to the Circuit Court's specific findings. On Page two of its "Memorandum" Judgment the Court specifically indicated:

> "***THIS COURT HAS EXAMINED THE RECORD ON APPEAL AND ALL 288 DOCUMENTS SUBMITTED IN CAMERA."

Accordingly, the Circuit Court panel knew that the names and witness statements were known and were among the documents which the Court

viewed in camera and orderdd that they should be released. The Respondents did not do that but lied and committed a fraud in the District Court, and upon review in the Circuit Court of Appeals in No. 83-1267.

After Petitioner and the District Court both submitted their independent list of witnesses who testified in the two distinct cases, the Respondents came forth with the two BARTON affidavits of 8th OCTOBER, 1982, and 15th NOVEMBER, 1982. Those affidavits are in direct conflict with the Circuit Court of Appeals for the District of Columbia Circuit holdings in the cases of: Mc GEHEE v. C.I.A., 697 F. 2d 1095 (D.C. 1983); and WEISBERG v. UNITED STATES DEPT. OF JUSTICE, 627 F. 365 (D.C. Cir. 1980).

As the panel of the Circuit Court of Appeals in No. 81-2030 pointed out the information that Petitioner requested under the FOIA guidelines is instrumental in the proper administration of Justice and is of great Public concern to prevent suborned perjury from polluting the Judicial mainstream, as Petitioner

is now presenting those facts before the District Court, Northern District of Illinois Eastern Division before the Honorable Judge JOHN F. GRADY, on his Petition seeking relief under a #2255 motion (now a Writ of Error Coram Nobis, since Petitioner has been discharged from further servitude) to vacate Petitioner's original criminal conviction. It is worthy to note that after the Honorable Judge GRADY, reviewed the allegations cited by Petitioner in his 2255 motion, by an Order dated 3rd OCTOBER, 1983, has ordered the Government in the pending 2255 Motion to Answer three (3) specific grounds that Petitioner has alleged voids his present criminal conviction and is in violation of the BRADY v. MARYLAND doctrine (i.e., 373 U.S. 83 (1963), and the specific holding in the Seventh Circuit under LARRISON v. UNITED STATES, 24 F. 2d 82 (7th Cir.1928) predicated on documents which the Petitioner has received through previous releases of FOIA but which were not available or known at the time of his criminal trial.

Petitioner is not trying to re-litigate his criminal conviction in this Court. What he is attempting to do is to get documents to which the Circuit Court of Appeals in Appeal No. 81-2030, indicated that Petitioner is entitled to, which will demonstrate, as previous ones have that the Government had deliberately suppressed vital exculpatory evidence, had utilized manufactured evidence and had encouraged government witnesses to exercise suborned perjured testimony with utter impunity from governmental prosecution in Petitioner's original criminal trial.

In furtherance of this point, it is also interesting to note, too, that the panel of the Circuit Court of Appeals in No. 81-2030 in rejecting the Respondent's "Petition for Rehearing" in that mandate order, also rejected the Respondent's contentions voiced in the Petition, where it stated:

> "***To the extent such statements (i.e., witness statements) may be relevant to a collateral attack on a prior conviction, the criminal discovery rules provide ample opportunity to the individual.***"
> (p. 5, par. 2, lines 3-5)

In addition, under review in the #2255 motion before the District Court in Chicago, Illinois, are the key elements of deliberate Governmental suppression of vital exculpatory documents, and the intentional suppression and denial in pre-trial motions before the trial judge in Indictment No. 76 CR 803, prior to time of trial, and upon formal motion, that those documents and information were in existence. Consequently, the FOIA documents which Petitioner has sought through his repeated excursions in the D.C. courts is germane to the truth seeking process of Justice and have been instrumental in pointing up the suborned perjury that had been intentionally and willfully permitted by the prosecutorial staff in Petitioner's criminal trial in 76 Cr 803 in the Northern District of Illinois, Eastern Division, during the time-frame of December, 1977.

The sought after documents are in existence under the FOIA holding of the Circuit Court's mandate in no. 81-2030, and should have been released, rather than submerged by the deceptive acts of the Respondents in the District Court upon remand, and thereafter in the Circuit Court of Appeals in No. 83-1267. The Respondent has created vexatious litigation and has fostered a deliberate miscarraige of Justice through stealth, deception and out-and-out fraud by its abuse of judicial failing to follow the specific mandate of the Circuit Court's mandate in No. 81-2030.

The "naked" Judgment entry of the Court of Appeal's panel decision in No. 83-1267, does not meet the legal issue of compliance under the law of the case doctrine. The two opinion Judgments of the Circuit Court of Appeals for the District of Columbia Circuit in No. 83-1267 and No. 81-2030, are in conflict with each other, and should be resolved by This Court to maintain consistency of case law holding under the doctrine of stare decisis

and to promote harmony within the Circuit.

C O N C L U S I O N

For the reasons stated herein, Petitioner requests that the Court grant his petition for a Writ of Certiorari.

Respectfully Submitted,

Stanley E. Tranowski

STANLEY E. TRANOWSKI -Petitioner
pro se

Submitted by:

STANLEY E. TRANOWSKI
5171 WEST ST. PAUL AVE.
CHICAGO ILLINOIS 60639

(312) 237-2705

Date: March 18th, 1984

APPENDIX

EXHIBIT "ONE" EXHIBIT "ONE"

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 83-1267) (Not to be published -- see Local Rule 8 (f)).

STANLEY E. TRANOWSKI, Appellant)

v.) Civil Action No. 79-02076

UNITED STATES SECRET SERVICE,) FILED OCT 21,1983

Appeal from the United States District Court of the District of Columbia.

Before: Wilkey and Bork, Circuit Judges, and Lumbard* Senior Circuit Judge, United States Court of Appeals for the Second Circuit.

J U D G M E N T

This cause came on for consideration on the record on appeal from the United States District Court for the District of Columbia, and briefs were filed by the parties. The Court has accorded full consideration to the issues presented; they occasion no need for an opinion. See D.C. Cir. Rule 13 (c). On consideration of the foregoing, it is

ORDERED and ADJUDGED, by this Court that the judgment of the District Court from which this appeal has been taken is hereby affirmed. It is further

ORDERED, by this Court, sua sponte, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended on November 30, 1981, and June 15, 1982.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
Clerk

* Sitting by designation purusant to 28 U.S.C. SEC. 295 (d).

APPENDIX

EXHIBIT "TWO" EXHIBIT "TWO"

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(No opinion)

NO. 81-2030)
) Cvil Action
STANLEY E. TRANOWSKI,) No. 79-02076
Appellant)
) FILED APR 21,1982
v.)
)
UNITED STATES SECRET SERVICE,)
)

Appeal from the United States District Court of the District of Columbia

Before BAZELON, Senior Circuit Judge, and WRIGHT and EDWARDS, Circuit Judges.

JUDGMENT

This cause came on consideration without oral argument at the request of the parties, pursuant to Local Rule 11(d). Counsel for the Government and appellant pro se have fully brief the issues, and they have been accorded full consideration by the court. They occasion no need for an opinion. See local Rule 13 (c)

For the reasons stated in the accompanying memorandum, it is ORDERED and ADJUDGED by this court:

That the judgment of the District Court is hereby vacated insofar as it grants summary judgment in favor of appellees on their claims of exemption under 5 U.S.C., sec. 552 (b) (7) (c)-(d) (1976) for documents or portions thereof that neither were provided to appellant by other law enforcement agencies, nor reflect information furnished to appellant under express promises of confidentiality, nor reflect personal data other than names of individuals, and that this portion of the case is remanded to the District Court;

That the District Court shall determine which documents or portions thereof reflect the names and statements of individuals who testified at the trials of appellant and his brother, and the names of law enforcement officers who witnessed or reported the statements and that the District Court shall grant summary judgment for appellant as to this material only; and

That in all other respects the judgment

of the District Court is hereby affirmed.

Per Curiam

For the Court

/s/ GEORGE A. FISHER --Clerk

MEMORANDUM page 1

Appellant seeks disclosure under the Freedom of Information Act, 5 U.S.C., sec. 552 (1976) of 39 documents and portions of 249 other documents that appellee Secret Service has withheld under claims that they are exempt from disclosure under subsections (b)(2) (b)(7)(C), (b)(7)(D), and (b)(7)(E) of Sec.552. The District Court granted summary judgment for appellees on all of its exemption claims.

This court has examined the record on appeal and all 288 documents submitted in camera. With respect to portions of documents withheld purusuant to subsections (b)(2) and (b)(7)(E) the affidavit submitted by appellees adequately justifies the claimed exemptions, and the record shows no material issues of fact in

dispute. Appellant has also failed to raise a material dispute as to the confidentiality of records furnished to appellees by other law enforcement agencies, and they are properly exempt under subsection (b)(7) (D). See Lesar v. Dept. of Justice, 636 F. 2d 472, 489-491 (D.C. Cir. 1980). Summary judgment on these issues was correct.

Some of the material withheld under subsections (b)(7)(C) and (D) includes names, personal data, and information provided by individuals, including law enforcement officers, other than appellant. Appellees' index and the documents themselves show that some of these individuals were given express promises of confidentiality. The record also shows that many gave public testimony at two trials that covered the same subject matter as the information they provided to appellees, contained in the record on appeal. The privacy interests of those who testified, at least with respect to their names and information other than

personal data, are substantially attenuated by their public testimony. Furthermore, appellant has established that disclosure of this information may further significant public interests. In addition, some material relating to individuals who testified at trial has been withheld on the claim that the information was provided under an implied promise of confidentiality. Any individuals who received such a promise and later testified lost their special status as subsection (b)(7)(D) "confidential sources," and they may receive only the protection afforded by subsection (C).

(page 2) The law does not contempate withholding the names and prior statementsof individuals who have given public testimony. See NLRB v. ROBBINS TIRE & RUBBER CO., 437 U.S. 214, 242 (1979). Therefore this material should not have been withheld.

Appellees have also withheld the names of the agents who took and/or reported the state-

ments of individuals who later gave public testimony. Although law enforcement officers retain a privacy interest in their identities, it is less strong than that of a private individual, and it may be negated by a showing that some public interest may be served by disclosure. Lesar, supra, 636 F. 2d at 487. The record shows enought of a possibility that disclosing these names will further a significant public interest to warrant disclosure, taking into account the general policy of disclosure under the FOIA and the fact that appellees have shown no special reason why disclosure of these names may be harmful.

APPENDIX

EXHIBIT "THREE"

EXHIBIT "THREE"

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 80-1386) (Not to be published -- See Local Rule 8 (f)
STANLEY E. TRANOWSKI,)
Appellant) Civil Action No. 79-2076
v.)
UNITED STATES SECRET SERVICE,) FILED FEB.19, 1981

Appeal from the United States District Court of the District of Columbia

Before: WRIGHT, TAMM AND GINSBURG, Circuit Judges.

J U D G M E N T

This cause came on for consideration on the record on appeal from the United States District Court for the District of Columbia and briefs were filed by the parties. On consideration of the foregoing, it is

ORDERED and ADJUGED by this Court, that the jugment of the District Court on appeal herein is hereby reversed and the case is remanded to the District Court for further proceedings, for the reasons set forth in the attached memorandum.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
Clerk

EXHIBIT THREE

EXHIBIT THREE

NO. 80-1386 --Tranowski v. United States Secret Service

MEMORANDUM

In 1979 Stanley E. Tranowski, then an inmate of Leavenworth Penitentiary, requested the United States Secret Service to release copies of all documents relating to the investigation and indictment leading to his federal conviction. The Secret Service ultimately released all or part of 249 documents. Thirty-nine documents were entirely withheld. Tranowski then initiated this suit, claiming that the Freedom of Information Act (FOIA) mandates disclosure of the withheld material.

After receving a lengthy government affidavit and inspecting the documents in camera the district court granted summary judgment for the government. The district court's order stated only:

> "This Freedom of Information Act case is before the Court on the motion of the defendants for summary judgment. The Court has made an in camera inspection of the documents responsive to the plaintiff's request and finds that the portions and entire documents withheld are properly exempt from the Act. Accordingly, it is by the Court, this 28 day of March, 1980,
>
> ORDERED, that the motion of the defendants for summary judgment be, and the same hereby is, granted purusuant to Rule 56 of the Federal Rules of Civil Procedure in that there are no material issues of fact genuinely in dispute and the defendants are entitled to judgment as a matter of law.

Appendix for Appellees at 48. Since we find this order "inadequate to admit of meaningful appellate review in terms of the relevant statutory starndards," Ackerly v. Ley, 420 F. 2d. 1336, 1337 (D.C. Cir. 1969), we reverse and remand.

- 2 -

In Ackerly, supra, this court reversed a summary judgment in favor of the government in a FOIA case because the district court had not adequately discussed the legal basis for its decision. We explained that "(t)he fuller discussion we require would include a more

detailed identification of the nature of the documents in question, and a greater exposure of the reasons why the particular documents were regarded as exempted from disclosure." 420 F. 2d at 1342. Subsequent decisions have adhred to the holding in Ackerly, Founding Church of Scientology v. Bell, 603 F. 2d 945 950 (D.C. Cir. 1979); Schwartz v. IRS, 511 F. 2d 1303 (D.C. Cir. 1975)[1]

1/ In Holy Spirit Association for the Unification of World Christianity v. CIA, No. 79-2143 (D.C. Cir. Dec. 23, 1980), this court declined to reverse a district court order that summarily directed disclosure of withheld documents on the grounds that the government's claim of exemption had been "overly broad." In that case, however, the court noted that the need for a full statement of reasons is less compelling when the district court directs disclosures than when it upholds exemption since the government possesses the documents and knows what information they contain. The Ackerly ruling was intended to aid the FOIA plaintiff who lacks first-hand knowledge of the withheld documents and may have difficulty framing his appeal. See Schwartz, supra, 511 F. 2d at 1307 (noting uniquesness of FOIA cases and handicapt of plaintiffs who do not know "the documents" exact contents"). Even in Holy Spirit, moreover, the court stressed that "the preferable practice is a full explanation of exemption and orders of disclosure" Slip op. at 15.

(p. 3)

And in Schawartz the court stated that the withheld documents were protected by exemption 5 of FOIA. 511 F. 2d at 1304 n.3. In this case the district court neither described the character of the withheld documents nor identified the provision that exempts them from disclosure.

The government urges that, despite the brevity of the district court's order, we need not remand because the government submitted a detailed affidavit in support of its motion for summary judgment and the district court inspected the documents in camera. We do not believe, however, that either government affidavits or in camera inspection adequately substitutes for a full explanation of the legal basis of a district court's decision in a FOIA case. Indeed, in both Ackerly and Schwartz the government submitted affidavits sdescribing withheld material and the district court conducted an in camera inspection. Those

safeguards did not remedy the defective district court orders in those cases, and they fail to do so here.[2]

---

[2] We also reject the government's suggestion that this court review the disputed documents in camera. We are reluctant to review information withheld from more than two hundred documents without first receiving the benefit of a more detailed decision from a court that has already completed that task.

(p. 4)

We note, finally, that in addition to the shortcomings of the district court's order the government's "Statement of Material Facts As to Which There is No Genuine Issue" did not comply with local district court rule 1-9(h). In Gardels v. CIA, No. 80-1253 (D.C. Cir. Oct. 30, 1980), a FOIA case, we held that a government Statement merely incorporating by reference whole affidavits does not comply with that rule. In this case, as in Gardels, the government's Statement of Material Facts merely adopts an entire government affidavit. We express no opinion on whether Gardels should apply retro-

actively, in every case. However, since we must reverse this gase on other grounds, the government will have the opportunity to prepare a proper rule 1-9(h) statement. On remand, therefore, we expect the government to submit an adequate Statement of Material Facts and the District Court, if it still finds summary judgment appropriate, to detail the basis for that decision.[3]

---

[3] We have considered Tranowski's complaint that the government failed to submit a Vaughn index. Attached to the affidavit of Deputy Director Myron L. Weinstein, however, is an index of disputed documents that appears to conform adequately with Vaughn v. Rosen, 484 F. 2d 820 (D.C. Cir. 1973), cert denied, 415 U.S. 977 (1974), and Founding Church of Scientology v. Bell, 603 F. 2d 945 (D.C. Cir. 1979). See Appendix for Appellees at 22-47. We find, no error, therefore, in the cistrict court's failure to grant Tranowski's motion for a Vaughn index. If Tranowski has particular objections to the index submitted by the government, he may raise those objections on remand.

APPENDIX

EXHIBIT "FOUR" EXHIBIT "FOUR"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	NO. 76 CR 803
	)	(80 C 3667)
v.	)	
	)	
	)	
STANLEY EUGENE TRANOWSKI,	)	
	)	
Defendant	)	

ORDER

After a jury trial in this case which concluded in December of 1977, the petitioner Stanley Tranowski was convicted of passing a counterfeit $5.00 bill at a Burger king Restaurant in Chicago. He received a sentence of six years. On appeal, the conviction was affirmed. United States v. Tranowski, 78-1272 (7th Cir. Jan. 8, 1979) (unpublished opinion). The Court of Appeals rejected petitioner's arguments that evidence connecting him with other similar counterfeit bills was erroneous

admitted and that the identification testimony was insufficient to show that he was the person who passed the bill in question.

Petitioner also filed a motion for a new trial based on newly discovered evidence. His claim was that a Secret Service agent who rebutted his alibi at the trial had given false testimony about how long it had taken him to drive an automobile over a particular route. I denied the motion and the Court of Appeals (p. 2) again affirmed. United States v. Tranowski, No. 79-1989, June 7, 1982, (unpublished order).

Now pending before the court is Tranowski's petition pursuant to 28 U.S.C., Section 2255 seeking to set aside his conviction on various constitutional grounds. Petitioner has served the custodial portion of his sentence and is now on parole.

The government has not as yet responded to the petition, and it is the purpose of today's order to indicate what grounds needs

a response.

The government should file an answer to the following grounds of the petition:

GROUND ONE A: That the government knowingly suppressed the fact that Peter McGhee, one of the identification witnesses, made extensive efforts to locate the passer of the bill, contrary to his trial testimony that he had no connection with the case between the date of the occurrence and a considerable time later when he was contacted by the police; that McGhee informed the police that the person he chased on the date of the occurrence lived at an address other than the one occupied by petitioner; and that McGhee has very poor eyesight. (See memorandum in support of petition, pp.2-7C)

GROUND ONE B: The alleged failure to turn over Section 3500 material which would have impeached the testimony of the witness Fusello, another identification witness. (See memorandum pp. 7D-7L).

GROUND THREE A: That the government failed to tell the defendant that the counterfeit bills had been tested for defendant's fingerprints with negative results. (See memorandum pp. 12-16).

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Each of the three foregoing grounds of the petition appears to raise a Brady issue or an issue under United States v. Larrison. It is, therefore, appropriate that the government be required to answer.

The three remaining grounds of the petition do not in my view raise issues which require an answer by the government. They are:

GROUND TWO: That the government concealed the names of Peter McGhee's companions and the favorable testimony they might give. The defendant offers nothing but speculation to support this ground. There is no evidence that McGhee's companions had any relevant testimony to give, let alone that their testimony would have been favorable to the defendant. (see memorandum, pp. 8-12).

GROUND THREE B: That the government conducted electronic surveillance of the defendant which it failed to reveal to him in pretrial discovery. Defendant's only basis for believing that the government engaged in electronic surveillance is his belief that his telephone records were subpoenaed from the telephone company by the Grand Jury. It is a long way between a subpoena of telephone company records and the conduct of an electornic surveillance. Petitioner does not allege facts which are inconsistent with the government's denial that there was such surveillance. (See memorandum, pp. 17-19).

GROUND FOUR: The allegation that the court communicated with the jury during its deliberation The basis for this assertion (memorandum pp. 20-23) is that after the verdict was returned, I suggested that one of petitioner's witnesses, his brother Walter, be considered for a perjury prosecution.

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Petitioner reasons that I must have acquired the basis for my suspicion of Walter by improperly communicating with the jury during its deliberations.

I state unequivocally that, with the exception of whatever communication there may have been with the jury through the deputy marshall concerning their convenience as to meals (I have no recollection as to whether there was any such communication), I did not communicate with the jury, nor receive any communication from them, at any time during their deliberations, unless there was some communication, as a question by the jury, which took place with the knowledge and consent of the parties. (I do not recall that there were any questions from the jury, but without benefit of a transcript, I am not certain that there were none. What I am certain of is that I had no communication of any kind with the jury concerning the merits of the case, the subject

(page 4) matter of the case or anything concerning the testimony of Walter Tranowski, except as those matters may have been covered by my jury instructions or other statements made in open court, on the record, and in the presence of the parties).

Relief will be denied on Grounds Two, Three B, and Four.

Petitioner's motion to disqualify me from consideration of his petition because of my alleged improper communication with the jury is denied. The reason for denying the motion is that no such communications took place.

The government should file its answer to Grounds One A, One B and Three A by November 1, 1983, and petitioner may reply by December 1, 1983.

DATED: 3 OCT 1983

ENTER: /S/ JOHN F. GRADY
United States District Judge

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